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5 Telephone: 949-334-8650
6 Fax: 949-334-8691
7 Email: TMF@lawofficeTMF.com

8 Attorney for Plaintiff, JOSHUA ASSIFF

9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA

11 **JOSHUA ASSIFF,**

12 **Plaintiff,**

13 **v.**

14 **COUNTY OF LOS ANGELES;**
15 **SHERIFF DEPUTY BADGE**
16 **NUMBER 404532;**
17 **And DOES 1 through 10,**

18 **Defendants.**

Case No. 2:22-cv-05367 RGK (MAAx)

**MEMORANDUM OF POINTS AND
AUTHORITIES IN RESPONSE TO
DEFENDANT'S APPLICATION TO
CONTINUE TRIAL AND PRE-TRIAL
DEADLINES; DECLARATION OF
THOMAS M. FERLAUTO**

Action Filed: August 3, 2022
Pretrial Conference: July 10, 2023
Trial Date: July 25, 2023

Assigned to: Hon. R. Gary Klausner,
District Judge, Courtroom 850

All Discovery Matters Referred to: Hon.
Maria A. Audero, District Judge

24 Plaintiff JOSHUA ASSIFF (hereinafter referred to as "ASSIFF" or "Plaintiff")
25 hereby respectfully submits the following memorandum of points and authorities in
26 response to the application to continue trial and pre-trial deadlines filed in this action
27 by Defendants COUNTY OF LOS ANGELES ("COLA") and SERGEANT TRAVIS
28

KELLY (“KELLY”) (hereinafter COLA and KELLY shall collectively be referred to as “Defendants”).

I. INTRODUCTION

Plaintiff is a 21-year old black male and a student at Antelope Valley College where he plays basketball. Plaintiff was driving from his home to a teammate’s house in order to carpool to basketball practice. For no apparent reason and without probable cause, KELLY, a male Caucasian motorcycle Sheriff deputy, pulled Plaintiff over. For no apparent reason and without probable cause, KELLY – as well as other deputies who subsequently responded to the call – all tasered, choked, pepper sprayed, beat and arrested Plaintiff. Plaintiff has asserted two causes of action – the First Cause of Action against KELLY for violation of 42 USC § 1983 (arrest without probable cause and with excessive force), and the Second Cause of Action against COLA for violation of 42 USC § 1983 (*Monell* liability).

II. STATEMENT OF FACTS RELEVANT TO THIS APPLICATION

1. Defendants seek to continue the trial and pre-trial deadlines. Plaintiff recognizes that additional time may be necessary to complete discovery in this action, however, only because of Defendants’ failure to provide discovery on a timely basis.

2. Plaintiff has complied with all of his discovery obligations. Plaintiff appeared for his deposition and gave testimony on April 14, 2023. Plaintiff made his expert witness disclosure -- including expert witness report -- in a timely fashion on May 10, 2023. Defendants have already noticed the deposition of Plaintiff’s expert for May 31, 2023.

3. Defendants have not complied with their discovery obligations. KELLY failed to appear for his scheduled deposition on April 25, 2023. COLA failed to appear for its scheduled deposition on April 26, 2023. (See, Notices of Nonappearances attached hereto as **Exhibit 1**.) Neither Defendant made an expert witness disclosure on May 10, 2023.

4. The discovery cut-off in this action is currently May 10, 2023.

- 1 5. The expert disclosure deadline is currently May 10, 2023.
- 2 6. Plaintiff properly noticed KELLY’s deposition for April 25, 2023.
- 3 7. Plaintiff properly noticed the deposition of the persons most
4 knowledgeable at COLA about certain relevant topics for April 26, 2023.
- 5 8. At the time these depositions were noticed, Plaintiff was NOT aware
6 that KELLY was on medical leave, injured or otherwise unavailable to testify.
- 7 9. It was not until April 12, 2023 that Defendants first notified Plaintiff
8 that KELLY might be on medical leave. (See, **Exhibit A** Gupta Email April 12, 2023:
9 “I very recently learned that Sgt. Kelly is currently out on medical leave.”)
- 10 10. In spite of the fact that Defendants learned that KELLY was on medical
11 leave and unavailable for a deposition in early to mid-April, Defendants waited
12 almost a month, until the very day of the May 10 discovery cut-off, to bring this
13 application and present any evidence of KELLY’s condition.
- 14 11. Plaintiff has always offered to work with Defendants in rescheduling
15 Defendants’ depositions. Plaintiff offered to move the depositions from April 25 and
16 26 if Defendants would offer alternative dates for the depositions prior to the
17 discovery cut-off. Plaintiff made such requests on April 11, 12, 13, 17, 18, 21 and
18 24 (See, for example, **Exhibit B**, Ferlauto Email April 13, 2023 “Kelly is scheduled
19 for 4/25 and COLA is scheduled for 4/26. Before we can move those dates, we need
20 to select a mutually agreeable alternative. Please provide me with alternative dates.”
21 **Exhibit C**, Ferlauto Email April 21, 2023 “I need to take your clients’ depositions
22 before that discovery cut-off. Those depositions are currently scheduled for next
23 week. Unless we settle on mutually agreeable alternative dates, I need to go forward
24 as scheduled and note your clients’ non-appearance. Please let me know what you
25 intend to do.”)
- 26 12. Defendants never offered alternative dates for either KELLY or COLA
27 before the discovery cut-off.
- 28

1 13. Plaintiff repeatedly requested that if Defendants were going to move the
2 Court to extend deadlines that they do so as soon as possible. Plaintiff made such
3 requests on April 17, 21 and 24. (See, for example, **Exhibit 2** (attached hereto)
4 Ferlauto Email April 17, 2023 -- “If you are going to seek to extend any more dates,
5 I suggest you prepare and file your motion as soon as possible. Once we see the
6 factual circumstances presented in you motion, we will decide whether we oppose or
7 stipulate to the relief requested.”) Defendants did not bring this application prior to
8 the dates set for Defendants’ depositions.

9 14. Since Defendants had not brought this application prior to the dates set
10 for Defendants’ depositions, and since Defendants had not provided alternative dates
11 for these depositions prior to the discovery cut-off, Plaintiff had no choice but to go
12 forward with the depositions as noticed and have the court reporter note Defendants’
13 failure to appear. The Court reporter fees for these two Certificates of
14 Nonappearance was \$1,400.00.

15 15. Although KELLY may be on medical leave, Defendants have never
16 explained why the deposition of COLA could not proceed as noticed or at least before
17 the discovery cut-off.

18 **VII. CONCLUSION**

19 Plaintiff will leave it to the Court’s discretion as to whether to grant the relief
20 requested by this application or entertain a motion by Plaintiff for issue or evidentiary
21 sanctions against Defendants for their failure to give discovery. [See, FRCP
22 37(d)(1)(A)(i); *Henry v. Gill Industries, Inc.* (9th Cir. 1993) 983 F2d 943, 947; *Hilao*
23 *v. Estate of Marcos* (9th Cir. 1996) 103 F3d 762, 764-765 -- A party who fails to
24 appear for deposition is subject to sanctions even in the absence of a prior order.]
25 Obviously, if the Court is not inclined to grant said issue or evidentiary sanctions,
26 Plaintiff would support the relief requested in this application (at least as to the
27 discovery cut-off) as Plaintiff needs a fair opportunity to conduct the discovery that
28 the Defendants failed to provide.

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DATED: May 11, 2022

The Law Office Of Thomas M. Ferlauto, APC

By: 
Thomas M. Ferlauto
Attorney For: Plaintiff, JASHUA ASSIFF

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3. Defendants have not complied with their discovery obligations. KELLY failed to appear for his scheduled deposition on April 25, 2023. COLA failed to appear for its scheduled deposition on April 26, 2023. (See, Notices of Nonappearances attached hereto as **Exhibit 1**.) Neither Defendant made an expert witness disclosure on May 10, 2023.

5. The expert disclosure deadline is currently May 10, 2023.

7. Plaintiff properly noticed the deposition of the persons most knowledgeable at COLA about certain relevant topics for April 26, 2023.

9. It was not until April 12, 2023 that Defendants first notified Plaintiff that KELLY might be on medical leave. (See, **Exhibit A** Gupta Email April 12, 2023: “I very recently learned that Sgt. Kelly is currently out on medical leave.”)

6

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2 application and present any evidence of KELLY's condition.

3 11. Plaintiff has always offered to work with Defendants in rescheduling
4 Defendants' depositions. Plaintiff offered to move the depositions from April 25 and
5 26 if Defendants would offer alternative dates for the depositions prior to the
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13 as scheduled and note your clients' non-appearance. Please let me know what you
14 intend to do.")

15 12. Defendants never offered alternative dates for either KELLY or COLA
16 before the discovery cut-off.

17 13. Plaintiff repeatedly requested that if Defendants were going to move the
18 Court to extend deadlines that they do so as soon as possible. Plaintiff made such
19 requests on April 17, 21 and 24. (See, for example, **Exhibit 2** (attached hereto)
20 Ferlauto Email April 17, 2023 -- "If you are going to seek to extend any more dates,
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23 stipulate to the relief requested.") Defendants did not bring this application prior to
24 the dates set for Defendants' depositions.

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26 for Defendants' depositions, and since Defendants had not provided alternative dates
27 for these depositions prior to the discovery cut-off, Plaintiff had no choice but to go
28 forward with the depositions as noticed and have the court reporter note Defendants'

1 failure to appear. The Court reporter fees for these two Certificates of
2 Nonappearance was \$1,400.00.

3 15. Although KELLY may be on medical leave, Defendants have never
4 explained why the deposition of COLA could not proceed as noticed or at least before
5 the discovery cut-off.

6 I declare under penalty of perjury under the laws of the State of California and
7 the United States of America that the foregoing is true and correct. Executed this
8 11th day of May, 2023 in Laguna Hills, Orange County, California.

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12 THOMAS M. FERLAUTO
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Exhibit 1

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JOSHUA ASSIFF,)	
)	
Plaintiff,)	
	)	Case No.
vs.	)	2:22-cv-05367 RGK (MAAx)
)	
COUNTY OF LOS ANGELES;	)	AFFIDAVIT RE
SHERIFF DEPUTY BADGE	)	NONAPPEARANCE OF
NUMBER 404532; and	)	DEFENDANT
DOES 1 through 10,)	
)	
Defendants.)	
)	

I, Barbara C. Meek, a Certified Shorthand
Reporter in and for the State of California, do hereby
certify:

That at the hour of 10:00 a.m. on Tuesday,
April 25, 2023, I appeared remotely via Zoom
videoconference for the purpose of reporting the
deposition of Travis Kelly, a defendant herein.

1 At that time and place there also appeared
2 Thomas M. Ferlauto, attorney for the plaintiff, and
3 McCauley Mayeda, Zoom videoconference host.

4 There being no appearance by the witness,
5 either in person or through counsel, I departed the
6 Zoom videoconference at 10:15 a.m.

7
8 EXECUTED this 25th day of April,
9 2023.

10 *Barbara C. Meek*

11
12 BARBARA C. MEEK, CSR #8090

13 Certified Shorthand Reporter in
14 and for the State of California

ORIGINAL

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JOSHUA ASSIFF,)	
)	
Plaintiff,)	
	)	Case No.
vs.	)	2:22-cv-05367 RGK (MAAx)
)	
COUNTY OF LOS ANGELES;	)	AFFIDAVIT RE
SHERIFF DEPUTY BADGE	)	NONAPPEARANCE OF
NUMBER 404532; and	)	DEFENDANT
DOES 1 through 10,)	
)	
Defendants.)	
_____)	

I, Barbara C. Meek, a Certified Shorthand
Reporter in and for the State of California, do hereby
certify:

That at the hour of 10:00 a.m. on Wednesday,
April 26, 2023, I appeared remotely via Zoom
videoconference for the purpose of reporting the
deposition of the Person Most Knowledgeable for the

1 County of Los Angeles, a defendant herein.

2 At that time and place there also appeared
3 Thomas M. Ferlauto, attorney for the plaintiff, and
4 Jacob Mayeda, Zoom videoconference host.

5 There being no appearance by the defendant,
6 either in person or through counsel, I departed the
7 Zoom videoconference at 10:15 a.m.

8
9 EXECUTED this 26th day of April,
10 2023.

11
12 

13 BARBARA C. MEEK, CSR #8090

14 Certified Shorthand Reporter in
15 and for the State of California
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25

P.O. Box 862
West Covina, CA 91791
626-331-9516

**PLEASE NOTE
NEW
ADDRESS**

DATE	INVOICE NO.
4/29/2023	23-126

Law Offices of Thomas M. Ferlauto
Thomas Ferlauto, Esq.
25201 Paseo de Alilcia
Suite 270
Laguna Hills, Ca 92653

Law Offices of Thomas M. Ferlauto
Thomas Ferlauto, Esq.
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Laguna Hills, Ca 92653

CASE NAME	DEPONENT	Date Taken	Reporter	TAX I.D. NO.
Assif vs. COLA	TRAVIS KELLY	4/25/2023	BM	45-2069704
DESCRIPTION			AMOUNT	
Original and One Copy			700.00	
TERMS Net 30		PAYMENT DUE BY: 5/29/2023		TOTAL \$700.00

ALL AMOUNTS CHARGEABLE TO ATTORNEYS AND/OR LAW FIRM. NO CREDIT IS GIVEN TO LITIGANTS

P.O. Box 862
West Covina, CA 91791
626-331-9516

**PLEASE NOTE
NEW
ADDRESS**

DATE	INVOICE NO.
4/29/2023	23-127

Law Offices of Thomas M. Ferlauto
Thomas Ferlauto, Esq.
25201 Paseo de Alilcia
Suite 270
Laguna Hills, Ca 92653

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25201 Paseo de Alilcia
Suite 270
Laguna Hills, Ca 92653

CASE NAME	DEPONENT	Date Taken	Reporter	TAX I.D. NO.
Assif vs. COLA	PMK FOR COLA	4/26/2023	BM	45-2069704
DESCRIPTION			AMOUNT	
Original and One Copy			700.00	
TERMS Net 30		PAYMENT DUE BY: 5/29/2023		TOTAL \$700.00

ALL AMOUNTS CHARGEABLE TO ATTORNEYS AND/OR LAW FIRM. NO CREDIT IS GIVEN TO LITIGANTS

Exhibit 2

From: Thomas Ferlauto tmf@lawofficetmf.com
Subject: Re: 610-2: Assiff, Joshua vs. County of Los Angeles, et al.
Date: April 17, 2023 at 11:12 AM
To: Molshree Gupta mgupta@kmslegal.com
Cc: Spencer Carter scarter@kmslegal.com, Patrick Stockalper pstockalper@kmslegal.com, Maria L. Nixon mnixon@kmslegal.com
Bcc: Thomas Ferlauto TMF@lawofficeTMF.com



If you are going to seek to extend any more dates, I suggest you prepare and file your motion as soon as possible. Once we see the factual circumstances presented in your motion, we will decide whether we oppose or stipulate to the relief requested.

Until the dates are extended by the court we still need to complete discovery before the current discovery cut-off. Kelly is still currently scheduled for 4/25 and COLA for 4/26. Please let me know as soon as possible whether you will be producing witnesses on those dates or whether we need to select another date before the discovery cut-off. Again, we can do Sergeant Kelly on Saturdays if necessary.

Thanks,

Tom

LAW OFFICE OF
THOMAS M. FERLAUTO
A PROFESSIONAL LAW CORPORATION

DIRECT DIAL 310-849-7554

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